

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.1.2007

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN

Writ Petition No.9291 of 2003

G.Charles Balasundaram

.. Petitioner

vs.

1. The Deputy General Manager,
Pondicherry Agro Service and
Industries Corporation Ltd.,
Agro House, Thattachavady,
Pondicherry 605 009.

2. The Presiding Officer,
Labour Court,
Karaikal

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India as stated therein.

For petitioner : Mr.M.Gnanasekar

For respondents : Mr.T.P.Manoharan for R1

ORDER

The writ petition has been filed for the issuance of a writ of certiorarified mandamus to call for the records relating to the Award, dated 13.1.2003, in I.D.No.6 of 2001, on the file of the second respondent and quash the same and consequently to direct the first respondent to re-employ the petitioner with all consequential benefits.

The brief facts of the case, as stated by the petitioner, are as follows:

2. The petitioner was appointed as an Assistant Store Keeper in the year, 1989. He was paid a sum of Rs.39/- per day being a casual employee. While so, after March 1993, the first respondent had declined to engage the petitioner in service. Therefore, the petitioner had approached the concerned Labour Officer. While the matter was pending, the Managing Director of the first respondent Corporation had informed the petitioner that his case was considered by the Board, for absorption, and that he should withdraw the petition pending before the Labour Officer. Accordingly, the petitioner did not pursue the petition before the Labour Officer. Since no steps had been taken to absorb the petitioner in service, he had submitted an application to the respondent Corporation for settling the employees' Provident Fund dues. Since he was without employment and for the reason that he had to take care of his family, he had gone abroad, for about 13 months, in search of a job.

He had gone away from the month of September, 1996 till the month of October, 1997.

3. The petitioner had initiated conciliation proceedings and since it had failed, the matter was referred to the Labour Court, in I.D.No.6 of 2001. The labour Court has dismissed the petition, without proper consideration of the materials on record. Therefore, the petitioner had filed the present writ petition challenging the award passed by the labour Court.

4. In the counter-affidavit filed on behalf of the first respondent it has been stated that the petitioner had suppressed the material facts and documents relating to the case and had belatedly raised the Industrial Dispute making vexatious and untenable claims.

5. It has been stated that the first respondent Corporation is a Government of Pondicherry undertaking and a Company registered under the Companies Act, 1956. It has been established mainly for the purpose of the development of Agriculture and other agro relevant activities in the Union Territory of Pondicherry. Permanent employees had been engaged to carry out the regular work of the first respondent Corporation. However, to attend to the occasional and temporary miscellaneous work, daily rated employees had been engaged, from time to time. With regard to such occasional and temporary miscellaneous work, the petitioner had been engaged in the Karaikal branch of the corporation, from 27.5.1991, depending upon the requirement, paying him the wages at the rate of Rs.39/- per day. The petitioner was neither a regular employee nor a temporary employee of the Corporation and therefore, his name had not been included in the rolls of the regular employees of the Corporation. During the month of September-November 1992, the petitioner had got an employment in Saudi Arabia and therefore, he had left India. Hence, the petitioner had not turned up for work from 4.11.1992. Since the petitioner had voluntarily left seeking employment in Saudi Arabia, he had claimed the monetary benefits, payable under the employees' provident fund scheme, 1952, and the employees' Family Pension Scheme, 1971, and he had also received the same. He has also prepared and submitted the Form-19, under the Employees' Provident Fund Scheme, 1952, wherein, he had stated the date of leaving the services of the corporation, as 10.11.1992. Even in the other Forms, which he had submitted the same date has been given. It only goes to show that he had voluntarily left from 10.11.1992 and had not presented himself for employment thereafter. Suppressing all the facts as stated above, the petitioner had raised an Industrial Dispute, in I.D.No.6 of 2001, on the file of the second respondent, stating that he was removed from service from the year, 1993, and that he had been appointed as an Assistant Store Keeper in the respondent Corporation from the month of February, 1989, and he was being paid a salary of Rs.3,000/- per month.

6. However, the learned counsel appearing on behalf of the petitioner had submitted that the model standing orders would be applicable to him and accordingly, even if it was taken, as stated by the respondent Corporation, that he had abandoned his service or that he had stopped from work, an enquiry should have been conducted, since he was coming under the category of workman.

7. On the other hand, the learned counsel appearing on behalf of the first respondent Corporation had submitted that the petitioner was only a daily rated employee, being paid a sum of Rs.39/- per day, and only on that basis the petitioner had turned up for work to carry out the temporary miscellaneous work. Further, the petitioner had made a representation for the first time, on 13.10.1999, with regard to his alleged non-employment from the year, 1993. No worthwhile explanation had been given for such a long delay in raising the issue of alleged non-employment. In spite of the petitioner being asked to file his passport, he had refused to do so. Since such production of the passport would show that he had not been present in India during the relevant period. Therefore, adverse inference could be gathered against the claims made by the petitioner.

8.On analysing the rival contentions advanced on behalf of the petitioner as well as for the first respondent and on a perusal of the documents available, it is clear that the labour Court had taken into consideration all the relevant factors, before it had passed the final Award, dated 13.1.2003, in I.D.No.6 of 2001. Nothing has been shown on behalf of the petitioner to support his contentions to persuade this Court to conclude that the award was wrongly made.

9.From the facts and circumstances of the case, this Court is not in a position to find any flaw in the findings of the labour Court in its Award, dated 13.1.2003. Further, this Court, while exercising its powers under Article 226 of the Constitution of India, cannot be persuaded to reappraise the evidence, based on which the labour Court had come to its conclusion, as held by a decision of the Supreme Court in Hari Shankar Sharma and Others Vs. Artificial Limbs Manufacturing Corpn., and others ((2002) 1 SCC 337).

In such view of the matter, the writ petition stands dismissed. No costs.

Sd/-
Assistant Registrar

/true copy/

Sub Assistant Registrar.

To

1. The Deputy General Manager,
Pondicherry Agro Service and
Industries Corporation Ltd.,
Agro House, Thattachavady,
Pondicherry 605 009
 2. The Presiding Officer,
Labour Court,
Karaikal
- + One cc to Mr. T.P. Manoharan Advocate SR 5045.
GG (co)
sg 6/2/07

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